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October 6, 2005

Steven L. Ledoux, Town Manager
Town of Westford
55 Main Street
Westford, MA 01886

RE: Westford Police Department - Police Daily Log

Dear Steve:

You have requested that I review the procedures of the Westford Police Department ("Department") with respect to the maintenance of the daily log which is required by the provisions of Mass. Gen. Laws c. 41, §98F. In addition, you have asked me to review the circumstances relating to the redaction of identifying information from a copy of the daily log which involved an arrest which occurred on August 31, 2005. For the reasons summarized below, I have concluded as follows:

1. The Department does maintain a daily log which satisfies all of the requirements of Mass. Gen. Laws c. 41, §98F.
2. The Department was exercising appropriate discretion when it redacted certain identifying information regarding an August 31, 2005 arrest from a copy of the daily log which was provided to the press.

As background, I offer the following chronology of relevant events:

1. Prior to August 31, 2005 and for a period of some nineteen years before that date, the Department has maintained one (1) daily log through a software program designed specifically for that purpose. Entries are made into the daily log, in chronological order, of responses to valid complaints received, crimes reported and the names and addresses of persons arrested and the charges against such persons arrested.
2. Prior to August 31, 2005 and for some period of time before that date, the Department, as a courtesy to the Lowell Sun and the Westford Eagle, has been producing printed excerpts from the daily log which are entitled "Incident Daily Press Log" and "Arrest Log". The arrest log included all information required by Mass. Gen. Laws c. 41, §98F. The excerpts are produced on a weekly basis and are left for the newspaper representative at the front desk of the Department.
3. On August 31, 2005, in the matter of *Commonwealth v. Susan Clickner*, on motion by the Middlesex District Attorney, an Order of Impoundment was issued by Judge Brooks of the Ayer District Court relating to reports of rape and sexual assault or attempts to commit such offenses.
4. On August 31, 2005, an arrest was effected by the Department at 5:46 p.m. in Groton of Susan Clickner.
5. On August 31, 2005, at 7:27 p.m. Deputy Chief Tom McEnaney issued a direction to all Departmental personnel that "No one is authorized to release any information regarding the Clickner arrest. All inquiries shall be directed to the Middlesex District Attorney's Office."
6. On September 1, 2005, Ms. Clickner was arraigned in the Ayer District Court.
7. On or about September 5, 2005, the Incident Daily Press Log and the Arrest Log were produced and left at the front desk for the newspaper representatives. The identifying information for the Clickner arrest was redacted, by being blackened out, pursuant to the order of Deputy Chief McEnaney. In addition, Captain Edward Cossette and Chief Robert Welch were also concerned that the release of information might also prejudice the ongoing police investigation. The

Public Records Law, Mass. Gen. Laws c. 66, §10 and the definition of "public records" under c. 4, §7(26) contain an exemption for reports which relate to an ongoing investigation.

8. On September 15, Ms. Clickner was indicted. The indictment list was released to the media by the Middlesex District Attorney's office.

You and I had a chance to meet with Captain Edward Cossette to review the procedures and, at that time, I was provided with copies of the daily log as well as the two excerpts which were provided to the press. As stated above, the complete arrest information for the Clickner arrest and all other arrests are contained in the daily log and are reflected in the printed documents. I have also discussed these procedures and the issues presented with Chief Robert Welch who also advised me that the Department has recently received accreditation after a multi-year process of review. Included within that process would have been a review of the record keeping procedures of the Department.

After review, it is my legal opinion that the daily log is being maintained by the Department in accordance with the provision of Massachusetts law. Under the Public Records Law, an individual has a right to inspect a public record and to request a copy of same. The Public Records Law contains certain exemptions to the definition of public record. In the instant situation, the action of the Department, in redacting the identifying information regarding the Clickner arrest, was done in order to comply with impoundment order of the Ayer District Court and, as a precautionary measure, to prevent any negative impact to an ongoing investigation. Those particular protections, however, would have become moot as to the arrest record, once the indictment information was made public by the District Attorney's office.

I am available to address any additional issues you or the Selectmen or Chief Welch may have regarding this matter.

Very truly yours,

Gary S. Brackett

GSB/dsh
cc: Robert Welch, Police Chief